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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Written statement submitted by Franciscans International a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 March 1997]

Human rights and the quest for peace in the Holy Land

1. It is a cause for satisfaction, and hope, that the current Israeli-Palestinian peace process in the Holy Land, which is taking place within the framework of the Madrid Regional Peace Conference for the Middle East, is, in effect, promoting the further implementation of resolution 181 (II) of the United Nations General Assembly, of 29 November 1947, in terms of both favouring the proper independence and the appropriate interdependence of the Israeli and Palestinian peoples, in the former Mandatory Palestine, and doing this through broad international involvement, specifically through the multi-track Regional Peace Conference.

2. The United Nations is not institutionally a direct actor in this process, although, ultimately, the process and its outcome depend on United Nations endorsement. Specifically, determination that resolution 181 (II), on which the just claims of both peoples are founded internationally, depends on the fulfilment, if not of its detailed territorial dispositions - now, in many respects, obsolete - then of its overriding

intent. This intent is to ensure that, throughout the Holy Land, in both national States, and above all, in Jerusalem and its environs, the institutions of government and the whole of society be founded on the acceptance, promotion and observance of human rights, including especially the right to freedom of religion and conscience, on the basis of the equality of all, without discrimination. Indeed the resolution prescribed, inter alia, explicit provisions to this effect that both States were to incorporate in their respective Constitutions.

3. The subsequent breakdown in security in the Holy Land, and the ensuing, prolonged, conflict between the two nations - involving other countries, near and far - retarded for decades the implementation of the United Nations vision for the Holy Land. In particular, a situation of armed conflict, with all its corollaries and consequences, has not been helpful to safeguarding observance of human rights, while either nation still lacks a proper Constitution incorporating the precise provisions mandated by the United Nations.

4. The peace process has brought hope to the Palestinian and Israeli peoples. They experience the process as fraught with dangers and difficulties, often halting, yet their perception is that the national leaderships, as well as the sponsors and international participants in the Peace Conference, are determined that it continue and reach its goal of a definitive peace treaty between the Israeli and Palestinian nations.

5. Now even as it - rightly and wholeheartedly - supports this determination, is it not equally the duty of the international community to insist on that dimension of any peace, without which it cannot be worthy of that name, the human rights dimension? There is a danger that the two Governments, as well as the other States concerned in the Peace Conference, may become so focused on the many complex political, military and economic issues involved, as to neglect that other name for peace, which is human rights: their constitutional and legislative protection, as well as their administrative observance, especially in areas of permanent special international attention, namely, Jerusalem and its environs.

6. There is, of course, cause for particular attention, at present, to this complex situation on the ground:

(i) Pending the Israeli-Palestinian definitive peace treaty, some areas are still under a regime of belligerent occupation, subject to the 1949 Fourth Geneva Convention;

(ii) In the State of Israel, a slow and sometimes painful legislative effort to advance the ideals of the Declaration of Independence - by constitutional-like guarantees for certain human rights - is still having to contend with influential rival conceptions of the State and society;

(iii) In the Palestinian-governed territories, the foundational, historic, commitment of the Palestinian national movement to a democratic and secular State is yet to be fully realized - as the Palestinian nation expands its sphere of independent governance - legislatively and administratively, and by all branches and agencies of government and public authority.

7. Peace is necessary to the ability of both nations to guarantee the full observance of human rights, since only a definitive peace would definitively remove the real and claimed emergency situations, which are cited to justify the suspension, abridgement and even violation of human rights. At the same time though, human rights are essential for there to be peace, within and between these two societies.

8. Some human rights issues require urgent, practical attention. These issues are surely well known to the Commission and its members. Without prejudice to the importance of any other issues affecting human rights in the Holy Land, mention can be made of issues concerning the freedom of religion and conscience, freedom of expression and opinion, freedom of movement, and certain grave issues concerning the liberty and physical and moral integrity of the person, as well property rights. The Commission could surely assist both Governments in securing appreciation for, and observance of, these and other truly fundamental human rights, even in this period of transition from conflict to peace, when the Holy Land is subject, in fact, to three different legal regimes (two national ones and a regime of belligerent occupation). The task of managing the delicate mix of the remains of conflict and the beginnings of peace, arduous as it is, could not justify alienation of inalienable rights, which belong to that "image and likeness" of the Creator that is stamped upon humanity.

9. At the same time, it is suggested that, while attending on an urgent and practical basis to assisting and advising the two Governments during the present transitional period, the United Nations - author, guarantor, keeper of the Universal Declaration of Human Rights - offer to play a major role in shaping the human rights dimension of the peace process, in fidelity to the intent of resolution 181 (II). Let the United Nations emphasize that the maturity of both national communities in the Holy Land, and the definitive international endorsement of their bilateral accord, require, inter alia - indeed, in the first place - that they implement, within and between themselves, the human rights provisions of that resolution, amplified and specified by the subsequent evolution of international human rights law. Within both nations there are strong currents that might eventually carry them in an altogether different direction. Both, separately and jointly, may therefore greatly benefit from steady, determined help by the United Nations to stay the course charted by resolution 181 (II), affirmed by their own original "vision statements", and implicit in their internationally supported quest for peace.

10. Without prejudice to appropriate responsibilities earlier assumed by the Commission on Human Rights regarding the application of the Fourth Geneva Convention in areas still under belligerent occupation, pending their negotiated disposition within the next couple of years, it is suggested that the Commission, through suitable political, diplomatic, legal mechanisms, seek and receive as of now a major role in assisting the parties, together with their sponsors and the other peace partners, in developing and putting in place the human rights dimension of their evolving peace treaty, of their respective Constitutions and laws, and of their respective administrations. It is suggested that this be done with reference to the

intent of resolution 181 (II), and as a service to both nations, in a spirit of friendship and goodwill towards both - not in a needlessly confrontational mode, or in any way that may harm, rather than promote, the desired goal.

11. Let this initiative extend to promoting human rights education in both nations' schools, as well as human rights information in both nations' public and private mass media and "town squares". A serious commitment of effort and resources in both areas, in harmony with both national authorities, would make it very probably the most effective single initiative to promote peace, justice and reconciliation in the Holy Land.

12. This statement is submitted, under the auspices of Franciscans International, in cooperation with the Custody of the Holy Land, of the Order of Friars Minor. The Custody is the oldest public-law institution in continuous existence - both legal and effective - in the Holy Land, having been founded by the Holy See, in 1342. Through the centuries, the Custody of the Holy Land has received wide international recognition and has made official contributions to successive attempts to bring just and stable peace to the Holy Land, including, for example, the post-First World War Peace Conference and the preparation of resolution 181 (II). Now also, the Custody maintains constant contact with both Governments, is present within both societies, and enjoys the respect of the political and other communities, including, of course, the various Christian and other religious communities. In all matters concerning international justice and peace, as in everything else, the Custody is, of course, committed to upholding, supporting and promoting the teaching, policies and positions of the Holy See, which are well known at the United Nations, including those concerning the Holy Land, in general, and the current peace process, in particular. Explicit mention must, however, be made of the well-known position of the Holy See on the City of Jerusalem and its environs, where safeguarding the universally significant religious and cultural heritage, in a context of guaranteed observance of human rights - particularly the human right to freedom of religion and conscience - should require also "an internationally guaranteed special statute", in conformity with the intent of resolution 181 (II). Achieving such an international instrument, possibly through the multilateral track of the Peace Conference, should undergird the bilateral Israeli-Palestinian negotiations on Jerusalem (mandated by those parties' existing agreements), immeasurably enhance their effectiveness and ensure the international legitimacy of their bilaterally agreed outcome.

13. The oldest continuous institution of the Catholic Church in the Holy Land, the Franciscan Custody, inspired by St. Francis - who famously sought to promote peace and reconciliation, in the Middle East and elsewhere, even in the midst of the bitter conflicts of the thirteenth century - is at present participating in wide-ranging planning by the Catholic Church for a strong programme of education in human rights, with reference to the specific role of the United Nations, in its school systems in the Holy Land. This will be done in the belief that, to promote genuine peace, such programmes should be instituted in all schools systems, public and private, where they do not now exist. Let all school systems include a profound review of inherited trends and texts in those systems, where they do not promote human rights as the controlling value.

14. This planning, willed by the higher authorities in the Church, is not unconnected with the solemn commitment that the Holy See and the Catholic Church have made to defending and promoting human rights, specifically the right to freedom of religion and conscience, in the Holy Land. This undertaking is expressed in the celebrated article 1 of the Fundamental Agreement between the Holy See and the State of Israel (1993). It strikingly anchors all bilateral relations in the Universal Declaration of Human Rights and the instruments of its application. In thus bringing these international instruments to the fore, this Agreement is made to serve the cause of human rights throughout the Holy Land, and to be a beacon of light to the entire region.

15. The initiative of the Commission, which has been suggested in this statement, could powerfully affirm and complement all those other initiatives - whether on the plane of international treaty relations, or in the area of education, schooling and social communications - which seek to bring out, to sustain and to enhance the indispensable human rights dimension of the peace process.

16. The other name of peace is human rights. It is this noble purpose of the Commission on Human Rights that this statement supports, and to which it has sought to contribute.

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